

STATE OF INDIANA )  
 )  
COUNTY OF MARION ) SS: IN THE MARION CIRCUIT COURT  
CAUSE NO. 49D03 08 07 PL 034492

STATE OF INDIANA )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
AAA ENTERPRISE CONSTRUCTION, INC. and )  
RICK DONNELLA, individually and )  
doing business as AAA ENTERPRISE )  
CONSTRUCTION, INC. and ENTERPRISE )  
ROOFING CONTRACTORS, INC. )  
 )  
Defendants. )

**FILED**

(46) JUL 31 2008

*Elizabeth A. White*  
CLERK OF THE MARION CIRCUIT COURT

**COMPLAINT FOR INJUNCTION,  
RESTITUTION, COSTS, AND CIVIL PENALTIES**

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Greg Schrage, petitions the Court pursuant to the Indiana Home Improvement Contracts Act, Indiana Code § 24-5-11-1, *et seq.*, and the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1, *et seq.*, for injunctive relief, consumer restitution, investigative costs, civil penalties, and other relief.

**PARTIES**

1. The Plaintiff, State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code §24-5-0.5-4(c).
2. At all times relevant to this Complaint, Defendant Rick Donnellia ("Donnellia") was engaged in the business of home improvements, either individually, doing business as AAA

Enterprise Construction, Inc. or Enterprise Roofing Contractors, Inc., or as a shareholder of AAA Enterprise Construction, Inc., with a principal place of business located in Marion County.

3. At all times relevant to this Complaint, AAA Enterprise Construction, Inc. was an Indiana corporation, with an assumed business name of Enterprise Roofing Contractors, Inc. (“Enterprise”), engaged in the business of home improvements with a principal place of business located in Marion County.

4. Defendant Donnella is the owner and an officer of AAA Enterprise Construction, Inc., and is active in its management and operations. As owner, Donnella has controlled and directed the affairs of the corporation, including AAA Enterprise Construction’s advertising and sales practices, and has used the corporation for the purpose of misleading and deceiving Indiana consumers as set forth herein.

5. Enterprise was administratively dissolved by the Indiana Secretary of State on March 25, 2008.

### **FACTS**

6. Since at least October 30, 2006, Enterprise and Donnella have entered into home improvement contracts with Indiana consumers.

7. On or about October 30, 2006, Donnella, on behalf of Enterprise, entered into a contract with Mr. Tonie Hunter of Indianapolis, Indiana, wherein Enterprise agreed to perform roofing repairs and other home improvements, including replacing siding and replacing gutters, at Mr. Hunter’s home. Enterprise contracted to perform these home improvements for the price of Fifteen Thousand Two Hundred Fifty-Eight Dollars and Forty Five Cents (\$15,258.45). Mr. Hunter paid Eleven Thousand Eighty-Nine Dollars and Thirty-Five Cents (\$11,089.35) in the

form of an insurance check to Enterprise. A true and accurate copy of Enterprise's contract with Mr. Hunter is attached and incorporated by reference as Exhibit "A."

8. Enterprise and Donnell failed to include the following information in its contract with Mr. Hunter:

- a. any time limitation on the consumer's acceptance of the contract;
- b. the approximate starting and completion dates of the home improvements;  
and
- c. a statement of any contingencies that would materially change the approximate completion date.

9. Enterprise failed to give a fully executed copy of the home improvement contract to Mr. Hunter immediately after Mr. Hunter signed it.

10. As of today, Enterprise has yet to begin the home improvements to Mr. Hunter's house and has not provided Mr. Hunter with a refund.

**COUNT I—**  
**VIOLATIONS OF THE INDIANA HOME IMPROVEMENT CONTRACTS ACT**

11. The services described in Paragraph 7 of this Complaint are "home improvements" as defined by Indiana Code § 24-5-11-3.

12. The transaction referred to in Paragraph 7 of this Complaint is a "home improvement contract" as defined by Indiana Code § 24-5-11-4.

13. Enterprise is a "supplier" as defined by Indiana Code § 24-5-0.5-2(a)(3).

14. By failing to provide Mr. Hunter with a completed home improvement contract containing the information referred to in Paragraph 7 above, Enterprise violated the Home Improvement Contracts Act, Indiana Code § 24-5-11-10.

15. By failing to provide Mr. Hunter with a fully executed copy of the home improvement immediately after he signed it, Enterprise violated the Home Improvement Contracts Act, Indiana Code § 24-5-11-12.

16. Defendant's violations of the Indiana Home Improvement Contracts Act referred to in Paragraphs 14 and 15 of this Complaint constitute deceptive acts and subject Defendants Enterprise and Donnella to the remedies and penalties under Indiana Code 24-5-0.5-1 *et seq.*

**COUNT II—**  
**VIOLATION OF THE DECEPTIVE CONSUMER SALES ACT**

17. Plaintiff realleges and incorporates by reference the allegations contained in Paragraphs 1 through 16 of this Complaint.

18. The transaction referred to in Paragraph 6 of this Complaint is a "consumer transaction" as defined by Indiana Code § 24-5-0.5-2(a)(1).

19. Pursuant to Indiana Code § 24-5-0.5-3(a)(10), Defendants are presumed to have represented at the time of contracting that they would perform the home improvements within a reasonable time.

20. Defendants' representations to Mr. Hunter that he would be able to perform the home improvements or otherwise complete the subject of the consumer transaction within a reasonable time, when Defendants knew or reasonably should have known that they could not, constitute a violation of the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-3(a)(10).

21. Defendants' representations to Mr. Hunter that Defendants would perform the home improvements as promised by the Defendants, when Defendants did not intend to perform the home improvements, constitute a violation of the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-3(a)(11).

**COUNT III—**  
**KNOWING AND INTENTIONAL VIOLATIONS OF THE**  
**INDIANA DECEPTIVE CONSUMER SALES ACT**

22. Plaintiff realleges and incorporates by reference the allegations contained in Paragraphs 1 through 21 of this Complaint.

22. The acts described in Paragraphs 20 and 21 of this Complaint were committed by Defendants with knowledge and intent to deceive.

**RELIEF**

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against Defendants AAA Enterprise Construction, Inc. and Rick Donnell, individually and doing business as AAA Enterprise Construction, Inc. and Enterprise Roofing Contractors, Inc., and issue a permanent injunction, pursuant to Indiana Code § 24-5-0.5-4(c)(1), enjoining the Defendants from doing the following:

a. in the course of entering into home improvement transactions, failing to provide to the consumer a written, completed home improvement contract which includes at a minimum the following:

i. the name of the consumer and the address of the residential property that is the subject of the home improvement;

ii. the name and address of the home improvement supplier and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;

iii. the date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract;

iv. a reasonably detailed description of the proposed home improvements;

v. if the description required by Indiana Code § 24-5-11-10(a)(4) does not include the specifications for the home improvement, a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;

vi. the approximate starting and completion date of the home improvements;

vii. a statement of any contingencies that would materially change the approximate completion date;

viii. the home improvement contract price; and

ix. signature lines for the home improvement supplier or the supplier's agent and for each customer who is to be a party to the home improvement contract with a legibly printed or typed version of that person's name placed directly after or below the signature.

b. in the course of entering into home improvement transactions, failing to put the contract in a form that each consumer who is a party to it can reasonably read and understand;

c. in the course of entering into home improvement transactions, failing to provide a fully executed copy of the home improvement contract to the consumer immediately after the consumer signs it;

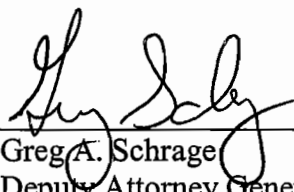
d. in the course of any consumer transaction, representing, expressly or by implication, that the Defendant is able to deliver or complete the subject of a consumer transaction within a reasonable period of time, when the Defendant knows or reasonably should know he cannot.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendants for the following relief:

- a. Cancellation of all of the Defendants' unlawful contracts with consumers, including but not limited to Tonie Hunter;
- b. Consumer restitution, pursuant to Indiana Code § 24-5-0.5-4(c)(2), for reimbursement of all unlawfully obtained funds remitted by consumers to the Defendants, including but not limited to Tonie Hunter in an amount to be determined at trial.
- c. costs, pursuant to Indiana Code § 24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;
- d. civil penalties, pursuant to Indiana Code § 24-5-0.5-4(g), for the Defendant's knowing violations of the Indiana Home Improvement Contracts Act and the Indiana Deceptive Consumer Sales Act, in the amount of Five Thousand Dollars (\$5,000.00) per violation, payable to the State of Indiana;
- e. civil penalties, pursuant to Indiana Code § 24-5-0.5-8, for the Defendant's intentional violations of the Indiana Home Improvement Contracts Act and the Indiana Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana; and
- f. all other relief the Court finds proper.

Respectfully submitted,

STEVE CARTER  
Indiana Attorney General  
Atty. No. 4150-64

By:   
Greg A. Schrage  
Deputy Attorney General  
Atty. No. 27630-32

Office of the Attorney General  
Consumer Protection Division  
302 West Washington St., IGCS 5th Floor  
Indianapolis, Indiana 46204  
Telephone: (317) 234-2354